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#### UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : 10/605,740 ) Confirm. No. 2739

Applicant : David E. Clement et al.

Filed : October 22, 2003

TC/Art Unit : 1744

Examiner : Theresa T. Snider

Docket No. : MAGD.01P

Cust. No. : 23732

#### PETITION TO MAKE SPECIAL

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Applicant respectfully petitions that this application be made special under the provisions of 37 C.F.R. 1.102, based upon the ground of the actual infringement of Applicants' invention.

As is stated in Applicants' attached DECLARATION IN SUPPORT OF PETITION TO MAKE SPECIAL, the text of Claims 1 and 10 of the above-identified application accurately describe the structure of the "AQUARIDE" rider/extractor product

Based upon the standard set forth in <u>Corning Glass Works v.</u>
<u>Sumitomo Elec. U.S.A., Inc.</u>, 868 F.2d 1251, 1259 (Fed. Cir. 1987):

To establish infringement, every limitation set forth in a patent claim must be found in an accused product or process exactly or by a substantial equivalent;

a rigid comparison of the "AQUARIDE" rider/extractor with each and every limitation in Claims 1 and 10 warrants a conclusion that both claims are infringed.

Serial No.: 10/605,740 Petition Dated: March 23, 2004

Petition to Make Special: Infringement

That based upon the foregoing rigid comparison of the "DUARIDE" rider/extractor with the language of Claims 1 and 10 of the above-described application, it is my opinion that some of the claims of the above-described application are unquestionably infringed.

An Information Disclosure Statement for the above-described application was filed electronically on March 17, 2004, listing those references known to Applicants that are deemed to be the most closely related to the claimed invention.

The present Petition is accompanied by the fee required under 37 C.F.R. 1.17(h).

Favorable consideration of this Petition to Make Special is respectfully requested.

If there are any questions or other issues that might be resolvable by a telephone call with Applicants' counsel, the Office is invited to place same at the number indicated below.

Respectfully submitted,

KENEHAN & LAMBERTSEN, LTD.

Dated: 23 MAR 2004

John C. Lambertsen

Registration No. 29,400

1771 E. Flamingo Road

Suite 211B

Las Vegas, NV 89119-5154

(702) 796-3476



#### UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : 10/605,740 ) Confirm. No. 2739

Applicant : David E. Clement et al.

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DECLARATION IN SUPPORT OF PETITION TO MAKE SPECIAL

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

I, Joseph J. Guzik, declare and say as follows:

That I am a citizen of the United States of America, and a resident of Las Vegas, Nevada.

That I am a co-inventor of the invention described and claimed in the above-identified patent application.

That I am presently employed by Brady Industries, Inc., of Las Vegas, Nevada, as an Account Representative, and sell janitorial equipment and cleaning supplies to my various accounts located in and around Las Vegas, Nevada.

That as part of my job responsibilities as an Account Representative I am actively engaged in learning of and about new janitorial equipment and supplies, including ridable equipment, in the sanitary maintenance industry.

Serial No.: 10/605,740

Declaration Dated: March 22, 2004

Declaration in Support of Petition to Make Special

That in my capacity as an Account Representative I became aware of a ride-on carpet extractor manufactured by Nilfisk-Advance and sold under the trademark "AQUARIDE".

That on several different occasions over the past year or so I have inspected an actual "AQUARIDE" rider and observed one or more operational demonstrations of the "AQUARIDE" equipment when configured as a ride-on carpet extractor.

That to the best of my knowledge, information, and belief, the "AQUARIDE" rider is actually on the market and has been purchased and used by customers of Brady Industries, Inc.

That to the best of my knowledge, information, and belief, and based upon visual inspection and operational demonstrations, the "AQUARIDE" ride-on carpet extractor is accurately described as: an operator driven ridable carpet-cleaning machine of the type having a cleaning solution reservoir, a vacuum blower and waste water holding tank, and a raisable power brush platform located between front and rear support wheels, and includes a pair of counter-rotating cylindrical brushes attached to said raisable power brush platform and a liquid spray nozzle attached to said carpet cleaning machine at a position forward of said pair of counter-rotating cylindrical brushes, said liquid spray nozzle in fluid communication with said cleaning solution reservoir.

That to the best of my knowledge, information, and belief, and based upon visual inspection and operational demonstrations, the "AQUARIDE" ride-on carpet extractor is, alternatively, accurately described as: a scrubbing machine for scrubbing a soft floor surface comprising: a frame; means to move said scrubbing machine along said soft floor surface in a manner

10/605,740 Serial No.:

Declaration Dated: March 22, 2004

Declaration in Support of Petition to Make Special

defining a path of movement; a pair of surface engaging rotary mounted on said frame for rotation about parallel, transversely extending axes; at least one spray nozzle mounted on the frame for applying a scrubbing liquid to said soft floor surface in said path of movement in advance of said rotary tools; and means mounted on said frame for collecting said scrubbing liquid after application of same to said soft floor surface, said collecting means including at least one surface engagable vacuum shoe.

That the sales brochure attached hereto as Attachment A provides a substantially accurate description of the "AQUARIDE" rider, both of its structure and of its operating features and characteristics.

That the undersigned declares further that all statements made herein of his own knowledge are true and that statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issuing thereon.

Dated: 3-22-04

MAGD.01P.DECL Mar-04

MAR ? 3 201X

03-24-04

PTO/SB/21 (02-04) Approved for use through 07/31/2006. OMB 0651-003 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number Application Number 10/605,740 TRANSMITTAL Filing Date 10/22/2003 **FORM** First Named Inventor Peter D. Magdos, et al Art Unit (to be used for all correspondence after initial filing) 1744 Examiner Name Theresa T. Snider Attorney Docket Number MAGD.01P Total Number of Pages in This Submission **ENCLOSURES** (Check all that apply) After Allowance communication • Fee Transmittal Form Drawing(s) to Technology Center (TC) Appeal Communication to Board Licensing-related Papers Fee Attached of Appeals and Interferences Appeal Communication to TC Petition Amendment/Reply (Appeal Notice, Brief, Reply Brief) Petition to Convert to a Provisional Application Proprietary Information After Final Power of Attorney, Revocation Status Letter Affidavits/declaration(s) Change of Correspondence Address Other Enclosure(s) (please Extension of Time Request Terminal Disclaimer Identify below): Declaration in Support of Petition to Make Request for Refund **Express Abandonment Request** CD, Number of CD(s) Information Disclosure Statement Remarks Certified Copy of Priority Document(s) Response to Missing Parts/ Incomplete Application Response to Missing Parts under 37 CFR 1.52 or 1.53 SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT Firm & Lanabertsen, Ltd Kenehar Individual name Signature Date March 23, 2004 **CERTIFICATE OF TRANSMISSION/MAILING** I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. Typed or printed name Date March 23, 2004 Signature

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



CASE #: MAGD.01P

APPLICANT: David E. Clement James G. Campbell Joseph J. Guzik

Peter D. Magdos

TITLE: SOFT FLOOR SCRUBBER

Serial No.: 10/605,740; Filed: October 22, 2003

CERTIFICATE IS ATTACHED TO THE **DECLARATION IN SUPPORT OF PETITION**TO MAKE SPECIAL (3 PAGES) OF THE ABOVE-NAMED PATENT APPLICATION.

EXPRESS MAIL NO. EL561721929US

DATE OF DEPOSIT: March 23, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the Assistant Commissioner of Patents, Washington, D.C. 20231.

John C. Lambertsen

March 23,

2004

Date

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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#### FEE TRANSMITTAI for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

X Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)130

Signature

Complete if Known						
Application Number	10/605,740					
Filing Date	October 22, 2003					
First Named Inventor	Peter D. Magdos, et al					
Examiner Name	Theresa T. Snider					
Art Unit	1744					
Attorney Docket No.	MAGD.01P					

METHOD OF PAYMENT (check all that apply)	FEE CALCULATION (continued)					
Check Credit card Money Other None	3. ADDITIONAL FEES					
Deposit Account:		Large Entity   Small Entity				
Deposit	Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
Account Number	1051	130	2051		Surcharge - late filing fee or oath	ree raiu
Deposit	1052	50	2052		Surcharge - late provisional filing fee or	
Account Name	1053				cover sheet	
The Director is authorized to: (check all that apply)		130	1053 1812		Non-English specification  For filing a request for ex parte reexamination	
Charge fee(s) indicated below Credit any overpayments		2,520 920*	1804	•	Requesting publication of SIR prior to	
Charge any additional fee(s) or any underpayment of fee(s)		920	1004	920	Examiner action	
Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.		1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
		110	2251	55	Extension for reply within first month	
FEE CALCULATION  1. BASIC FILING FEE		420	2252	210	Extension for reply within second month	
Large Entity Small Entity	1253	950	2253	475	Extension for reply within third month	
Fee Fee Fee Fee Description Fee Paid	1254	1,480	2254	740	Extension for reply within fourth month	
Code (\$) Code (\$) 1001 770 2001 385 Utility filing fee	1255	2,010	2255	1,005	Extension for reply within fifth month	
1002 340 2002 170 Design filing fee	1401	330	2401	165	Notice of Appeal	
1003 530 2003 265 Plant filing fee	1402	330	2402	165	Filing a brief in support of an appeal	
1004 770 2004 385 Reissue filing fee	1403	290	2403	145	Request for oral hearing	<u></u>
1005 160 2005 80 Provisional filing fee	1451	1,510	1451	1,510	Petition to institute a public use proceeding	
SUBTOTAL (1) (\$)	1452	110	2452	55	Petition to revive - unavoidable	
		1,330	2453	665	Petition to revive - unintentional	
2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE		1,330	2501	665	Utility issue fee (or reissue)	
Extra Claims below Fee Paid	1502	480	2502	240	Design issue fee	
Total Claims20** = X =		640	2503	320	Plant issue fee	
Claims - 3** = X = 4	1460	130	1460	130	Petitions to the Commissioner	
	1807	50	1807	7 50	Processing fee under 37 CFR 1.17(q)	
Large Entity   Small Entity   Fee   Fee	1806	180	1806		Submission of Information Disclosure Stmt	
Code (\$) Code (\$)	8021	40	802	1 . 40	Recording each patent assignment per property (times number of properties)	
1202 18 2202 9 Claims in excess of 20	1809	770	2809	385	Filing a submission after final rejection	
1201 86 2201 43 Independent claims in excess of 3 1203 290 2203 145 Multiple dependent claim, if not paid	4046	770	0044		(37 CFR 1.129(a))	<b> </b>
	1810	770	2810	J 385	For each additional invention to be examined (37 CFR 1.129(b))	
1204 86 2204 43 ** Reissue independent claims over original patent	1801	770	2801	385	Request for Continued Examination (RCE)	1
1205 18 2205 9 ** Reissue claims in excess of 20 and over original patent	1802	900	1802	900	Request for expedited examination of a design application	
	Other fee (specify) Petiton To Make Special 130					
SUBTOTAL (2) (\$)					P-14	0.00
**or number previously paid, if greater; For Reissues, see above						0.00
SUBMITTED BY (Complete (if applicable))						
Name (Print/Type) John C Lambart sen		cyrsu a		1-2	9.400 Telephone 702-796-3	3476

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MARIE #:

MAGD.01P

APPLICANT: David E. Clement James G. Campbell Joseph J. Guzik

Peter D. Magdos

TITLE: SOFT FLOOR SCRUBBER

Serial No.: 10/605,740 Filed: October 22, 2003

CERTIFICATE IS ATTACHED TO THE PETITION TO MAKE SPECIAL (2 PAGES) OF THE ABOVE-NAMED PATENT APPLICATION.

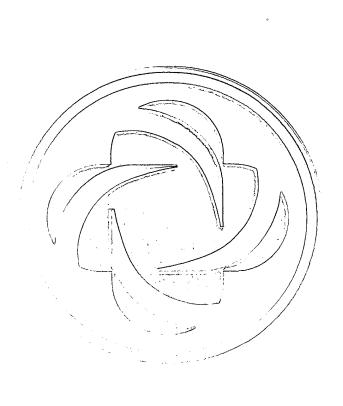
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Washington, D.C. 20231.

John C. Lambertsen



Driving Innovation



#### RIDING. NOT WALKING.

# WHAT A REVOLUTIONARY IDEA.

Unveiling a world-wide technical innovation in cleaning — the Advance Advenger™ and AquaRide™ lines. Revolutionary cleaning concepts that will change the way the industry thinks about cleaning. Featuring 10 interchangeable cleaning configurations, multiple cleaning solutions can be created by simply changing a cleaning deck. They grow as your needs grow without costly machine replacement. Advance is setting the standard and leading the way in innovation — again. Through Total Clean™ technology, we've created a better cleaning concept that produces superior results and is easier to clean and maintain. It's driving innovation through design that reduces the cost to clean. Proving once again that Advanced innovation really does matter.

## WHY WALK WHEN YOU SHOULD RIDE?



#### ADVENGER

## AHEAD OF THE REST. THE ADVANCE ADVENGER.

It's the first 24-inch rider scrubber and sweeper/scrubber. Designed to clean narrower aisles, it travels where no other has before. To tackle wider paths, consider the 26", 28", and 32" disc or cylindrical decks. All have the industry's best turning radius — 63" and increase productivity by more than 200%. Walk-behinds can't compare.

#### AQUARIDE

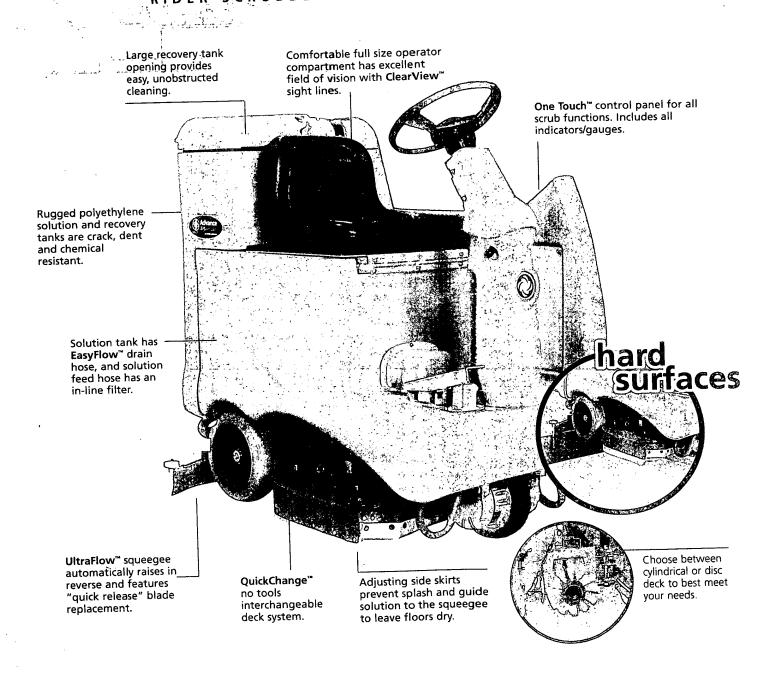
WHY WALK? INTRODUCING THE ADVANCE AQUARIDE AND AQUARIDE SE.

It's the first rider carpet extractor AND the first multitasking rider sweeper/extractor. The AquaRide SE replaces two tasks with one and increases productivity by more than 400%. Plus, it features a restoration mode and a low moisture mode to meet your cleaning needs. There's never been anything like it.

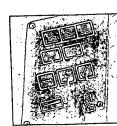


## DEFINING INNOVAT

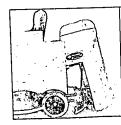
#### ADVENGER TM RIDER SCRUBBER AND SWEEPER/SCRUBBER



#### ADDED FEATURES



One-touch electronic function controls are conveniently located to keep operation simple and safe.



Easy access to batteries, squeegee and other components assures minimal down time.



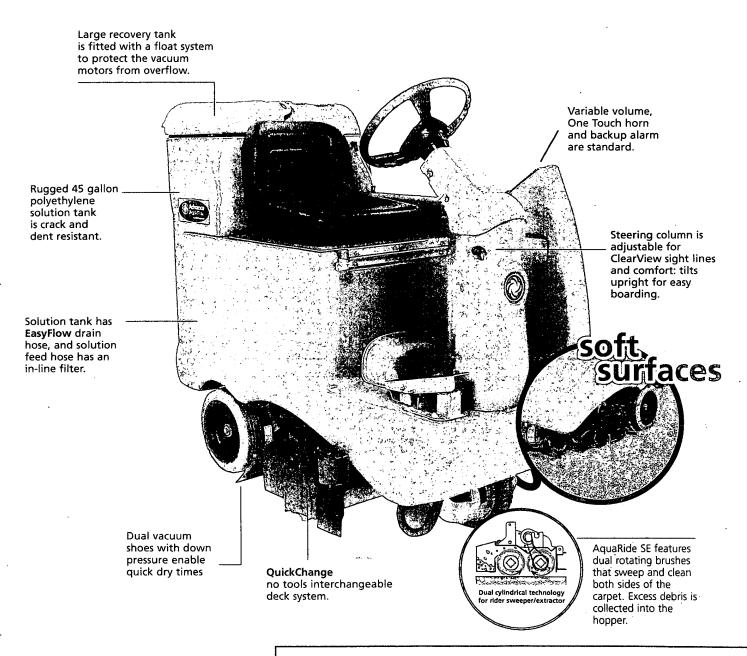


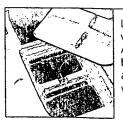
Daily maintenance is made easy with no-tools-required brush and disc removal.



### IONS IN CLEANING

## AQUARIDE TM RIDER EXTRACTOR AND SWEEPER/EXTRACTOR





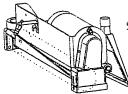
Low sound level, dual vacuum motors on the AquaRide are protected by an anti-foam chamber and easy access vacuum filter.

#### The AquaRide features two modes of cleaning.

1. RESTORATION MODE



ays



2. LOW MOISTURE MODE

Solution sprays on brush for low-moisture cleaning.

## INCREASE PRODUCTIVITY REDUCE THE COST TO CLEAN

People who pass through businesses appreciate clean floors. It affects how a business is perceived. That affects the bottom line. Get squeaky-clean performance and floors on a tight budget. Quick one-pass cleaning means increased productivity, safety and improved cleaning results with the Advance Advenger<sup>TM</sup>. Floors are clean and dry the first time. When compared to walk-behinds, the Advenger increases productivity by more than 200%. With the AquaRide<sup>TM</sup> SE, carpets are swept and extracted in one pass. Compared to a vacuum and extractor, the AquaRide SE increases productivity by more than 400%.

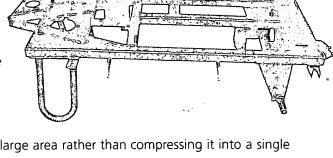
#### NOW THAT'S REDUCING THE COST OF OWNERSHIP.

AHEAD OF THE REST. FIRST OF SHOW. ONE OF A KIND. Not only is it comfortable to use, it is easier and safer to operate. Superior visibility. Less fatigue. More energy for the rest of the workday. An ergonomic control pad permits smooth commanding while maneuvering. It is fun to drive and looks as great as it performs. The benefit to you? Reduced employee turnover and increased productivity that drives down the cost to clean.

#### ADDED DRIVING INNOVATION

#### STRENGTH WITHIN

The Advance Advenger and AquaRide space-frame inspired design is found in everything from airplanes to high-performance race cars. It's the inspiration that fueled the foundation for Advance's newest additions. This proven self-reinforcing design



dramatically increases overall strength by spreading stress over a large area rather than compressing it into a single support. Besides an incredibly thick, 10-gauge steel frame that ensures remarkable durability, Advance packaged the most innovative features with components like disc brakes, front wheel drive and rugged polyethylene construction. Expect nothing less. Advance — a company driven to build the best.

Advance is the official cleaning equipment supplier for Dale Earnhardt Incorporated and Richard Childress Racing Enterprises.

#### ADVENGER

#### RIDER SCRUBBER, SWEEPER/SCRUBBER

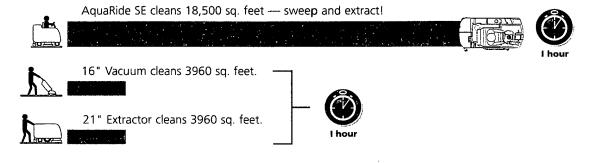
The Advance Advenger can clean up to 63,360 square feet per hour. A competitive 26" walk-behind scrubber only cleans 30,000 square feet per hour. The Advenger difference is an increase in productivity by more than 200%.



#### AQUARIDE

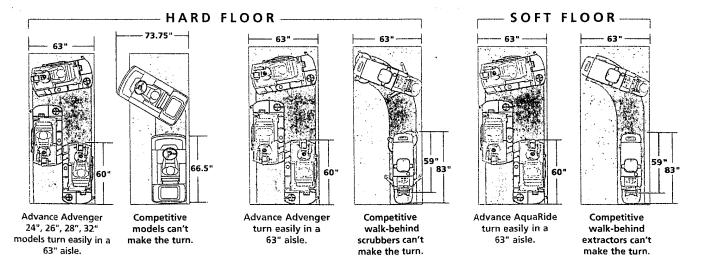
#### RIDER EXTRACTOR, SWEEPER/EXTRACTOR

The Advance AquaRide SE cleans up to 18,500 square feet per hour. A 16" vacuum and 21" extractor, both required to do the same job, can only clean up to 3,960 square feet per hour. **The AquaRide difference is an increase in productivity by more than 400%**.



#### SUPERIOR TURNING

With wheels in motion, Advance Advenger and AquaRide one-of-a-kind turning radius maximizes mobility while maintaining the optimum size for maneuvering through 32" and 36" doorways and aisles. Able to turn 180° left or right in a 63-inch aisle, it's the industry's best aisle turning radius.





#### **GET ADVENGERIZED**

The Advance Advenger™ and Advance AquaRide™ feature driving innovation that reduces the overall cost of cleaning. Advance's Total Clean™ technology creates savings over the long term. It's designed to make it easier for you. Easier to lower cleaning costs. Easier to grow with your needs. Easier to clean. Easier to maintain. And don't forget durability. It's the most innovative, most technically-advanced product available to meet your cleaning demands today and beyond. Simply put — there's nothing like it, and it sets new standards.

ADVANCE - DEFINING CLEANING INNOVATIONS.



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Drive one today. Ride on. Ride on.

